IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2762 OF 2004

IN

SUIT NO.6 OF 1995

Urveshi Pravinchandra Bhatt & others. ... Plaintiffs.

vs.

M/s.Universal Builders. .... Defendants.

Mr.Chetan Kapadia i/b. M/s.Kishore Thakordas & co., for Plaintiffs.

Mr.M.L.Palan i/b. S.M.Kazi, for Defendants

CORAM: D.K.DESHMUKH,J.

DATED: 1st July,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiffs for attachment before judgment of the property of the defendants. The attachment before judgment is sought on the allegations that the financial position of the

defendants is precarious and that the defendants are selling flats and shops in the building. The defendants have denied the allegations that their financial position is precarious. So far as the sale of shops and flats is concerned, it is contended that those shops and flats are being sold in usual course of business, because it is the business of defendants constructing the buildings and sale the shops and flats. The learned Counsel for plaintiffs submits that the letter on the basis of which the plaintiffs have filed the suit claiming money decree, is not denied by the defendants. Assuming that to be so, it will show that the plaintiffs have strong prima facie case for getting money decree against the defendants. But that is not the only ground to be seen for granting order of attachment before judgment. For order of attachment before judgment, the plaintiffs have to show that they have strong prima facie case for getting a money decree against the defendants and they have also to satisfy the Court that if the property of the defendants is not attached, the property is likely to be disposed of with the intention to defeat execution of the decree that may be passed in favour of the plaintiffs. So far as the second aspect of the matter is concerned, except saying that the financial position of the defendants is precarious, there is no material produced in support of that averment. So far as sale of flats and shops are concerned, it appears to be the business of the defendants to sell flats and shops in their buildings. It is not the case of the plaintiffs that apart from the building in question, the defendants do not have any other property. In short, the plaintiffs have not been able to place reliable material on record which can lead the Court to the conclusion that the

defendants are trying to dispose of the property with the intention to defeat execution of the decree that may be passed in favour of the plaintiffs. Usually property is attached in execution of a decree, but when plaintiff seeks attachment of the property belonging to the defendant even when there is no judgment in his favour, he has to make out a strong prima facie case for getting that relief because the order of attachment of the property of the defendant even before the judgment is rendered by the Court, has drastic consequences. As the plaintiffs have failed to make out the case for attachment before judgment, the notice of motion is disposed of.